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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**R.N. DEWBERRY, aka SITAWA  
NANTAMBU JAMAA, et al.,**

Plaintiffs,

**v.**

**RALPH DIAZ, Secretary, et al.,**

Defendants.

4:19-cv-01144 SBA

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: December 18, 2019  
Time: 2:45 pm  
Courtroom: TBD  
Judge: The Honorable Sandra B. Armstrong  
Trial Date: None yet  
Action Filed: March 1, 2019

Defendants R. Diaz, K. Allison, and S. Kernan, joined by Plaintiff Anne Butterfield Weills, file this Joint Case Management Statement in compliance with Civil Local Rule 16-9.

**I. JURISDICTION AND SERVICE**

The basis for subject matter jurisdiction in this case is federal-question jurisdiction under 28 U.S.C. § 1331, as Plaintiff Weills alleges a retaliation claim arising under 42 U.S.C. § 1983. No state-law claims are alleged in the complaint. The parties agree that there are no issues regarding personal jurisdiction or venue. No parties remain to be served.

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## II. FACTS

### A. Plaintiff's Position

Plaintiff Anne Butterfield Weills is a prisoners rights attorney and counsel of record in *Ashker v. Newsom*, No. 4:09-cv-05796 CW. She is subject to a lifetime ban from all CDCR institutions and from all confidential communication with prisoners in CDCR custody ("lifetime ban"), which includes her clients in *Ashker*. CDCR issued the ban after accusing Ms. Weills of communicating with clients using an unmonitored cell phone. The lifetime ban is a punishment that is disproportionate to the accusations against Ms. Weills, and constitutes retaliation against her for the exercise of her free speech rights to publicly advocate on behalf of her clients and against CDCR's policies regarding subjecting prisoners to solitary confinement. She was also singled out for this severe punishment. Defendants Kernan and Allison made the decision to impose and uphold the lifetime ban, and defendant Diaz continues to uphold the unconstitutional ban.

### B. Defendants' Position

Plaintiff Weills, counsel for Plaintiffs in the *Ashker* matter, alleges that Defendants violated her federal civil rights by banning her from all CDCR institutions confidential phone calls, and legal mail because Defendants concluded she had "illegal cell phone communications" with inmates. Specifically, on July 5, 2017, CDCR informed Weills that based on an investigation, CDCR determined that Weills had engaged in unlawful communication(s) with CDCR inmate(s) that violated the security of the CDCR facility.

In early 2017, CDCR discovered overwhelming evidence that Weills had intentionally engaged in numerous illegal cell-phone communications with an inmate. Accordingly, on March 3, 2017, CDCR advised Weills that she was temporarily banned from all CDCR institutions, including confidential phone calls and confidential legal mail, pending CDCR's investigation into potential violations of California Code of Regulations (CCR), Title 15, section 3178(s)(3.)

On July 5, 2017, defendant Allison advised Weills in writing that the investigation had been completed, and it was determined that Weills had engaged in unlawful communication(s) with CDCR inmate(s) that violated the security of the CDCR facility. Based on the severity of Weills'

1 conduct, CDCR issued a lifetime exclusion from CDCR institutions, and no confidential-  
2 communications privileges. CDCR informed Weills about the appeal process for challenging the  
3 decision.

4 On August 23, 2017, defendant Allison advised Weills that CDCR had concluded that she  
5 had numerous and extensive illegal cell phone communications with inmate(s), jeopardizing the  
6 security of CDCR institutions and that the lifetime ban imposed on July 5, 2017, would be  
7 upheld.

### 8 **III. LEGAL ISSUES**

9 1) Whether Defendants enacted the lifetime exclusionary ban against Plaintiff Weills  
10 for retaliatory reasons.

11 3) Whether Defendants are entitled to qualified immunity.

### 12 **IV. MOTIONS**

13 On November 20, 2019, this Court ruled on Defendants' motion to dismiss, granting the  
14 motion in part and dismissing claims 1 and 2 from the operative complaint. The only remaining  
15 claim is a retaliation claim by Plaintiff Weills. There are no pending motions before the Court.

### 16 **V. AMENDED PLEADINGS**

17 Defendants oppose leave to add new claims or defendants.

### 18 **VI. EVIDENCE PRESERVATION**

19 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored  
20 Information ("ESI Guidelines"), and have met and conferred pursuant to Fed. R. Civ. P. 26(f)  
21 regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues in  
22 this action.

### 23 **VII. DISCLOSURES**

24 Parties will make their initial disclosures as required under Fed. R. Civ. P. 26(a) by  
25 December 20, 2019.

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**VIII. DISCOVERY**

The parties have meet and conferred about propounding written discovery (including interrogatories, requests for admission and document production requests), and conducting depositions.

**IX. CLASS ACTIONS**

Not applicable.

**X. RELATED CASES**

Plaintiffs moved to relate this case to *Ashker v. Newsom*, No. 4:09-cv-05796 CW which was denied. Defendants would object to any further attempts to relate this matter.

**XI. RELIEF**

**A. Plaintiff's Statement**

Plaintiffs seek injunctive and monetary relief, including the rescission of Plaintiff Weills' lifetime ban, as well as attorneys' fees and costs.

**B. Defendants' Statement**

Defendants seek dismissal of this matter and an order that Plaintiff Weills takes nothing, as well as an order granting Defendants' fees and costs incurred in defending this action.

**XII. SETTLEMENT AND ADR**

The parties have not engaged in any settlement or ADR efforts, nor do the parties believe settlement is appropriate at this juncture.

**XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

The parties do not consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

**XIV. OTHER REFERENCES**

This action is not suitable for arbitration, a special master, or multidistrict litigation.

**XV. NARROWING OF ISSUES**

That parties have not identified issues that can be narrowed through agreement. The parties will consult on the potential for narrowing issues as opportunities to do so arise.

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**XVI. EXPEDITED TRIAL PROCEDURE**

The parties do not regard this case as a good candidate for expedited trial procedures.

**XVII. SCHEDULING**

The parties propose the following discovery plan in this matter:

- The parties will have until December 20, 2019, to exchange initial disclosures;
- At the end of the initial disclosure period, the parties request 180 days to conduct fact-based discovery including all remaining non-expert depositions, written discovery, discovery motions, and third-party discovery;
- The fact discovery cut-off will coincide with the close of non-expert discovery;
- Any expert designations and reports are due on the first court day after the close of fact discovery;
- The parties will have 90 days to conduct expert discovery;
- The discovery cut-off will coincide with the close of expert discovery;
- A summary judgment deadline, pretrial conference, and trial date will be set at a later time on the basis of the Court's schedule.

**XVIII. TRIAL**

The parties seek a jury trial.

**XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES**

Under Civil Local Rule 3-15, the parties know of no such interest other than the named parties to the action.

**XX. PROFESSIONAL CONDUCT**

Counsel for each party has reviewed the Northern District's Guidelines for Professional Conduct.

**XXI. OTHER ISSUES**

The parties are unaware of other issues this matter that require the Court's attention at this time.

1 Dated: December 9, 2019

Respectfully submitted,

2 XAVIER BECERRA  
3 Attorney General of California  
4 DAMON MCCLAIN  
5 Supervising Deputy Attorney General

6 */s/Preeti Bajwa*

7 PREETI K. BAJWA  
8 Deputy Attorney General  
9 *Attorneys for Defendants Diaz, Allison, and*  
10 *Kernan*

11 Dated: December 9, 2019

SIEGEL, YEE, BRUNNER & MEHTA

12 */s/ EmilyRose Johns*

13 EMILYROSE JOHNS  
14 *Attorneys for Plaintiff Weills*

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